IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1658 OF 2006

Kabir J. Mulchandani ...Petitioner

V/s.

The State of Maharashtra & Anr. ...Respondents

Mr.Satish L. Maneshinde and Mrs.Renuka Laxmeshwar for Petitioner.
Mr.S.S. Pednekar APP for Respondent No.1.
Mr.A. Khandeparker for Respondent No.2.

CORAM : V.M. KANADE, J.

DATED : 4th AUGUST, 2007.

P.C:-

1. Heard learned counsel for the Petitioner, learned APP for the Respondent No.1 and learned counsel for the Respondent No.2.

2. Petitioner has filed this Petition for quashing complaint which has been filed by the Respondent No.2 and which is pending before the Metropolitan Magistrate, 40th Court, Girgaum, Mumbai.

3. Respondent No.2 filed complaint alleging that the Petitioner used to harass his children. Accordingly, a complaint was registered for the offences punishable U/s.324, 342, 357 IPC. Sometimes in the year

1999, Respondent No.2 Jaidev Shroff and Romila Shroff had filed matrimonial proceedings before the Family Court at Bandra. Respondent No.2 had also filed a private complaint. All the disputes between the Respondent No.2 and Romila Shroff ultimately were settled and an undertaking to that effect was given by the Respondent No.2 to compound said offences against the Petitioner before the learned Additional Chief Metropolitan Magistrate, 40th Court, Mumbai. Decree was also passed by the Family Court in which said undertaking was recorded. In spite of undertaking being given by the Respondent No.2, the private complaint filed by the Respondent No.2 was not withdrawn.

4. The Petitioner, therefore, filed petition in this Court being Criminal Writ Petition No.204/2006. In the said petition also, a statement was made by the Respondent No.2 that he would approach the Trial Court and grant his no objection for compounding offences punishable U/s.324, 342 & 357 of IPC. Said statement was recorded by this Court and the petition was disposed of by an order dated 12th June, 2006.

5. It is submitted that though an undertaking was given by the

Respondent No.2 to this Court, even thereafter, he never appeared before the learned Magistrate for compounding the said offences. As a result, the learned Magistrate in the absence of no objection from the Respondent No.2, did not compound the case and under these circumstances, this writ petition has been filed under Article 227 of Constitution of India and U/s.482 of Cr.P.C.

6. Facts which are stated in this petition have not been controverted by the Respondent No.2 by filing an affidavit. In my view, therefore, under these circumstances, it is obvious, that the Respondent No.2 is trying to harass the Petitioner by refusing to appear before the learned Magistrate for the purpose of compounding offences in spite of solemn undertaking being given by him to this Court. It is no doubt true that this Court can issue show cause notice to the Respondent No.2 for committing breach of an undertaking which has been given by him to this Court. However, in my view, in spite of adopting said course of action, it would be appropriate if the criminal complaint which is filed by the Respondent No.2 is quashed and set aside.

7. It is a well settled position in law that powers which are exercised by this Court U/s.482 of Cr.P.C. are not restricted or limited in any way by the limitation which is imposed U/s.320 of Cr.P.C. by the Magistrate for the purpose of compounding non-compoundable offences. The Apex Court in the case of **B.S. Joshi & Ors. V/s. State of Haryana & Anr. reported in 2003 Cri.L.J.2028** in para No.15 has held as under:-

> "15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and section 320 of the Code does not limit or affect the powers under section 482 of the Code."

8. In the result, writ petition is allowed. Criminal case No.64/P/2002 pending before the 40th Court, Girgaum, Mumbai is quashed and set aside. Writ Petition is made absolute in terms of prayer clause(a). Under these circumstances, there shall be no order as to costs.

V.M. KANADE, J.